



DEPARTMENT OF
ECOLOGY
State of Washington

Rule Implementation Plan

Certified Water Right Examiners

Chapter 173-165 WAC

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Contact Information

This report is available on the Department of Ecology's website at <https://fortress.wa.gov/ecy/publications/SummaryPages/1211047.html>.

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Ecology publishes this document to meet the requirements of the Washington State Administrative Procedure Act (RCW 34.05.325)

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Purpose

Ecology provides the information in this implementation plan to meet agency and Administrative Procedure Act (RCW 34.05.328) requirements related to rule adoptions.

Introduction

The purpose of this rule implementation plan is to inform those who must comply with Chapter 173-165 WAC – Certified Water Right Examiners about how the Department of Ecology (Ecology) intends to:

- Implement and enforce the rule.
- Inform and educate persons affected by the rule.
- Promote and assist voluntary compliance for the rule.
- Evaluate the rule.
- Train and inform Ecology staff about the new or amended rule.

Also included in this plan is information about:

- Supporting documents that may need to be written or revised because of the new rule or amended rule.
- Other resources where more information about the rule is available.
- Contact information for Ecology employees who can answer questions about the rule implementation.

Implementation and Enforcement

The program is designed to support compliance with RCW 90.03.665, ensure those certified as a water right examiner are well qualified, and to protect the public interest. Individuals wishing to become a certified water right examiner must first submit an application, which is reviewed to verify that the individual meets the minimum qualifications set in statute and further defined in rule. They must then pass the CWRE examination. Successful applicants must sign and submit a copy of the Rules of Professional Performance, which outlines expectations, prior to certification.

Statute requires each certified water right examiner to complete eight hours of continuing education each year. Rather than suspend those that fail to complete this requirement in a timely manner, we incorporated this requirement into an annual certification renewal process. Certified water right examiners are also given up to 90 days as a grace period to complete the educational requirement and pay the annual recertification fee. They may not work as a certified water right examiner during this period and late fees apply, but they avoid the expense and delay involved with having to reapply and retest before becoming recertified.

Client complaints, issues of poor performance, and any indications of malfeasance are referred to the CWRE coordinator. The CWRE coordinator may work with regional permitting staff and program management to determine what further action, if any, is appropriate.

Ecology or the CWRE investigative committee may perform a general, preliminary, or full compliance investigation to ensure that the public is being competently served, or in response to client complaints, indications of poor performance, or when ecology suspects malfeasance.

- Ecology may use general compliance investigations to assess elements of the CWRE program, or the program as a whole.
- Ecology may use preliminary investigations to determine whether a situation warrants any action or a full investigation.
- Ecology will use full investigations primarily when circumstances are uncertain but indicate a potential need for suspending or revoking a certified water right examiner's certification.

RCW 90.03.665(4) authorizes ecology to suspend or revoke the certification of a certified water right examiner based on poor performance, excessive complaints from their clients, or malfeasance. Suspension is intended for the certified water right examiner to improve poor performance, resolve client complaints, or to acquire additional training; or ecology may suspend a certified water right examiner as a temporary measure during a compliance investigation. Ecology may enter into a probation agreement with a suspended certified water right examiner that would allow she/he to continue to perform some or all CWRE services during her/his period of suspension.

If a CWRE certification is revoked, the individual must wait at least five years before Ecology will consider their reapplication. Even after the five years has passed, Ecology may choose to reject the application of a person whose certification had previously been revoked even if the individual otherwise meets the minimum qualifications.

We intend to use an existing program staff member (0.20 FTE) as the CWRE coordinator to review CWRE applications, provide CWRE examinations, issue certifications, collect fees, identify continuing education opportunities and post them on the web, track continuing education hours for each certified water right examiner, maintain the list of certified water right examiners, and coordinate compliance and enforcement actions. In addition, program permitting staff will score the CWRE examinations, review CWRE proof reports of examination, and support compliance and enforcement actions.

Informing and Educating Persons Affected by the Rule

We have posted information and materials on the Certified Water Right Examiner Program on an agency web page. We are also maintaining a list of interested parties that we have

communicated with throughout the rule-development process. We will continue to focus on these two methods to communicate with potential certified water right examiners.

In addition, once the program is in place and we have a list of individuals that have gained certification as a water right examiner, we will be sending letters to parties who have submitted a proof of appropriation and need a proof examination for Ecology to certify their perfected water right.

Promoting and Assisting Voluntary Compliance

Within the compliance and enforcement section, the rule states, “Ecology will use informal methods, which are not appealable, to pursue compliance with RCW 90.03.665 and this chapter, and to ensure the public is competently served, such as the following:

- Spot-checking the work of certified water right examiners.
- Surveying or interviewing current and past clients.
- Providing technical assistance or training.
- Issuing verbal or written warnings, such as to advise on poor performance, give notice of one or more customer complaints, or to request actions to prevent violations before they occur (RCW 90.03.605 (1)(b)).”

Evaluating the Rule

As described earlier, the rule includes general investigations, spot-checking the work of certified water right examiners, and surveying or interviewing current and past clients to evaluate the effectiveness of the program.

Training and Informing Ecology Staff

Water Resources Program regional permitting staff are aware of the impending rule adoption. Except for those few that will be involved with reviewing CWRE applications and examinations, who are on our rule-development team, staff need take no new action until we have certified at least one individual as a water right examiner. Preparatory to that time, regional section heads must disseminate information on the new process to their support and permitting staff. The regions must also determine how best to initiate notice to permit and change authorization holders at the proof of appropriation stage that they should hire a certified water right examiner to perform their proof examination.

List of Supporting Documents that May Need to be Written or Revised

New

- CWRE – Rules of Professional Performance: A draft of this document was recently sent to our interested parties list and posted on the CWRE web site for public review and comment. It will be finalized before the rule takes affect.
- CWRE Application: Currently in draft form, it will be finalized before the rule takes effect.
- CWRE Examinations: We have a few versions of the test prepared.

Revised

- Flowcharts for:
 - Changing a Certificate of Water Right, Publication #08-11-017A
 - Changing a Water Right Permit, Publication #08-11-017B
 - Changing a Water Right Claim, Publication #08-11-017C
- FAQ: Water Rights in Washington, Publication #96-1804-S&WR
- Changing or Transferring an Existing Water Right, Publication 98-1802-WR

More Information

- The CWRE web sites:
 - <http://www.ecy.wa.gov/programs/wr/rights/cwre.html>
 - <http://www.ecy.wa.gov/programs/wr/rights/cwrep.html>
- CWRE FAQ: <https://fortress.wa.gov/ecy/publications/publications/1211030.html>
- CWRE Online Study Guide:
<http://www.ecy.wa.gov/programs/wr/rights/Images/pdf/cwre/04172012-study-guide-cwre.pdf>

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